STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JUSTICE FENNER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

SHERRY FENNER,

Respondent-Appellant,

and

JUAN MARTINEZ,

Respondent.

UNPUBLISHED
September 28, 2001

No. 231234
Muskegon Circuit Court
Family Division
LC No. 95-022410-NA

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Respondent-appellant ("respondent") appeals by right from an order terminating her parental rights to a minor child under MCL 712A.19b(3)(i) ("[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful"). We affirm.

Respondent first argues that the family court lacked jurisdiction to terminate her parental rights because she did not receive proper notice of the termination proceedings. See MCL 712A.12 (setting forth the notice requirement).[1] Respondent did not raise this due process issue

[1] We note that the failure to follow the court rules regarding notice requirements does not establish a jurisdictional defect. *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993). Only the "failure to provide the applicable *statutory* notice" can cause such a defect and therefore potentially warrant reversal. *Id*. at 231 (emphasis added).

below and therefore has not preserved it for appellate review. According to *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999), an unpreserved, constitutional error merits reversal only if it was "a plain error that affected substantial rights."

We initially note that respondent admits in her appellate brief that she received a summons and order to appear dated August 11, 2000. This summons and order to appear, a copy of which appellant attaches to her brief, stated, in paragraphs three through five, that a "permanent custody/termination hearing" would occur on September 7, 2000 and that the hearing would concern "the allegations in the attached petition." While respondent now attempts to enlarge the record on appeal[2] by asserting that she did not receive a copy of the petition along with the summons and order to appear, the available evidence (more specifically, the "attached petition" language in paragraph three of the summons and order to appear) contradicts this assertion. The available evidence also indicates that, contrary to respondent's additional assertion on appeal, respondent did in fact know that the subject of the scheduled hearing was termination. Indeed, paragraph five of the summons and order to appear clearly listed the purpose of the hearing. There is simply no evidence on the existing record that respondent failed to receive adequate notice of the termination hearing.[3]

Respondent next argues that her trial attorney rendered ineffective assistance of counsel. In termination cases, this Court applies "by analogy the principles of ineffective assistance of counsel as they have developed in the context of criminal law." *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). Accordingly, because respondent did not request a *Ginther*[4] hearing below, this Court's review is limited to mistakes apparent from the record. *People v Randolph*, 242 Mich App 417, 422; 619 NW2d 168 (2000). The burden is on respondent to show that counsel made a serious error that prejudiced her and deprived her of a fair trial. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). There is a strong presumption that counsel's conduct was reasonable. *Id.* "[T]his Court will not assess counsel's competence with the benefit of hindsight." *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Nothing in the record supports respondent's claim of ineffective assistance. On the contrary, the record indicates that respondent and counsel met for approximately two hours the day before the scheduled termination hearing and appeared for court the next day. At that time, according to the record, respondent told counsel that she had decided not to contest the petition and understood that her parental rights would be terminated. There exists no evidence that counsel coerced respondent into failing to contest the petition or that counsel made any other outcome-determinative errors. Reversal based on ineffective assistance of counsel is unwarranted.

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[2] An appellant may not enlarge the record on appeal. See, e.g., *People v Wiley*, 112 Mich App 344, 346; 315 NW2d 540 (1981).

[3] We note that respondent appeared in court on the date scheduled for the hearing but voluntarily left before the hearing commenced, without raising any issues about improper notice.

[4] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Finally, respondent argues that the family court improperly based the termination ruling on MCL 712A.19b(3)(i). This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. *Trejo, supra* at 344, 355.

The family court did not clearly err in this case. Indeed, a prior termination is an appropriate statutory ground for termination,[5] see MCL 712A.19b(3)(i), and it is undisputed that respondent's parental rights to another child were previously terminated as set forth in the statute. It is also apparent from the record that respondent chose not to contest the proceedings. Moreover, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

[5] Respondent's argument for the inappropriateness of using MCL 712A.19b(3)(i) as the sole basis for termination is garbled and difficult to understand; she does not make a reasoned and understandable argument with regard to the issue. An appellant may not "leave it up to this Court to . . . unravel and elaborate for him his arguments . . . ." *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998). At any rate, her apparent basic premise, that MCL 17A.19b(3)(i) cannot be used as the sole basis for termination, is contradicted by the clear language of the statute.